

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Coleson Smith	Team: Squad #01	CCRB Case #: 202202775	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 05/02/2022 2:25 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 110	18 Mo. SOL 11/2/2023	EO SOL 11/2/2023	
Date/Time CV Reported Tue, 05/03/2022 10:47 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 05/03/2022 10:47 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Mark Kistoo	04218	943444	110 PCT
2. PO Ulricka Joseph	21448	972028	110 PCT
3. PO Brendan Henriquez	23737	971992	110 PCT
4. PO Dianna Milo	22605	969986	110 PCT
5. PO Jonathan Cacavas	23858	968306	110 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Manuel Herrera	26180	971998	110 PCT
2. PO Christine Carlsen	26441	971857	110 PCT
3. PO Jonathan Reyes	23143	972202	110 PCT
4. PO Witheny Pierre	24056	963208	110 PCT
5. PO Stanley Leonard	23270	962547	110 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Mark Kistoo	Abuse: Sergeant Mark Kistoo forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
B.PO Ulricka Joseph	Force: Police Officer Ulricka Joseph used physical force against § 87(2)(b)	§ 87(2)(b)
C.PO Dianna Milo	Force: Police Officer Dianna Milo used physical force against § 87(2)(b)	§ 87(2)(b)
D.PO Brendan Henriquez	Force: Police Officer Brendan Henriquez used physical force against § 87(2)(b)	§ 87(2)(b)
E.SGT Mark Kistoo	Force: Sergeant Mark Kistoo used physical force against § 87(2)(b)	§ 87(2)(b)
F.PO Jonathan Cacavas	Force: Police Officer Jonathan Cacavas used physical force against § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On May 3, 2022, § 87(2)(b) filed this complaint with the CCRB over the phone.

On May 2, 2022, at approximately 2:25 P.M., inside of § 87(2)(b) in Queens, Sergeant Mark Kistoo forcibly removed § 87(2)(b) to the hospital (**Allegation A: Abuse of Authority**: § 87(2)(g) While removing § 87(2)(b) Sgt. Kistoo, and Police Officers Ulrick Joseph, Brendan Henriquez, Jonathan Cacavas, and Dianna Milo dragged § 87(2)(b) towards a stretcher (**Allegations B-F: Force**: § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

Body worn camera (BWC) footage was obtained from Sgt. Kistoo, PO Joseph, PO Henriquez, PO Cacavas, PO Milo and Police Officers Manuel Herrera, Christine Carlsen, Jonathan Reyes, Witheny Pierre, and Stanley Leonard, all of the 110th Precinct (**01-10 Board Review**).

No summonses or arrests resulted from the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Mark Kistoo forcibly removed § 87(2)(b) to the hospital.

The following facts are not disputed. On May 2, 2022, at approximately 2:25 P.M., § 87(2)(b) and her husband, § 87(2)(b) both called 911 and made complaints against each other. Emergency Medical Technicians (EMTs) together with Sgt. Kistoo, and Police Officers Joseph, Milo, Henriquez, Carlsen, Reyes, Cacavas, Pierre, and Leonard, all identified via investigation, responded to the location, and. Sgt. Kistoo instructed that § 87(2)(b) be removed to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated that § 87(2)(b) accidentally locked himself on the terrace of their shared apartment (**11 Board Review**), and that he broke a glass window on the terrace door, entered the apartment, and began to grab and pull § 87(2)(b) by her bathrobe. § 87(2)(b) called the police. The officers and EMTs arrived on scene and entered the apartment with § 87(2)(b) permission. PO Joseph and PO Henriquez spoke with § 87(2)(b) in the kitchen, while some other officers spoke with § 87(2)(b) into another room. § 87(2)(b) did not hear what § 87(2)(b) told the officers. § 87(2)(b) informed the officers about what had transpired between herself and § 87(2)(b) and began to “hyperventilate. She told the officers that her blood pressure was “sky high,” that she suffered from a series of chronic medical issues, that she did not want to go to the hospital, and only wanted § 87(2)(b) arrested and out of the apartment. While speaking with the two officers, Sgt. Kistoo approached, and together with some of the other officers, handcuffed § 87(2)(b) placed her on a stretcher, and had her removed via ambulance to § 87(2)(b)

According to § 87(2)(b) medical records, she arrived at § 87(2)(b) § 87(2)(b) A note § 87(2)(b) § 87(2)(b) stated that § 87(2)(b) denied having shortness of breath, that she had “good respiratory effort, no wheeze or rales,” and that her lab results were “unremarkable.” § 87(2)(b) noted that § 87(2)(b) was “calm and cooperative,” had “no acute medical condition,” was not in “any acute distress,” and did not appear “ill and diaphoretic.” § 87(2)(b) did not receive any new prescriptions or treatment. In the Assessment and Plan section cosigned by § 87(2)(b) it stated that § 87(2)(b) complained of shortness of breath

while in the Comprehensive Psychiatric Emergency Program (CPEP) because she has a history of the condition but that her symptoms were “not worse than her baseline.”

911 call records show that § 87(2)(b) called 911 and reported that “someone” was trying to break into her apartment through the terrace, and that the person was using a broom to break the window of the door. § 87(2)(b) called 911 a second time and said the person breaking into her home was trying to gain access to the apartment through a window. She never identified § 87(2)(b) as the person breaking into her home **(20-21 Board Review)**.

§ 87(2)(b) also called 911 and reported that his “wife” had locked him on the terrace, that she was refusing to let him inside the apartment, and that he had to break a glass on the terrace door in order to get into the apartment. § 87(2)(b) informs 911 that there are no weapons involved, and that his wife threw his cellphone into the terrace. A woman, identified via investigation as § 87(2)(b) is heard in the background speaking with 911, and arguing with § 87(2)(b) about the damaged terrace window. **(22 Board Review)**.

PO Joseph’s BWC footage at 02:13 shows PO Joseph and PO Herrera arriving on scene and knocking on § 87(2)(b) and § 87(2)(b) apartment door **(02 Board Review)**. § 87(2)(b) answers the door and PO Joseph tells him to come out into the hallway. As he does so, § 87(2)(b) approaches the door and invites the officers inside the apartment. At 02:51, PO Joseph accompanies § 87(2)(b) into her kitchen while PO Herrera speaks with § 87(2)(b) in the building’s hallway. § 87(2)(b) shows PO Joseph broken panes of glass in the door to the terrace off the kitchen and says § 87(2)(b) did it. She breathes rapidly and heavily and states, “I can’t breathe.” PO Joseph asks if § 87(2)(b) wants an ambulance. § 87(2)(b) replies, “I want charges pressed against § 87(2)(b).” At 04:08, § 87(2)(b) says her heart rate is very high. PO Joseph says that she is going to call an ambulance to check on § 87(2)(b). § 87(2)(b) says she’s not going downstairs. At 05:09, PO Joseph steps away from § 87(2)(b) and requests an ambulance over the radio for a “female with scratches on her from glass.” At 06:29, PO Joseph speaks with Sgt. Kistoo on the phone, telling him § 87(2)(b) is complaining of pain and injury due to § 87(2)(b) grabbing § 87(2)(b). At 12:20, § 87(2)(b) tells PO Joseph that she takes her medication every day, once in the morning and once at night. At 13:35, § 87(2)(b) states, “I swear to you, no ambulance is taking me out of here.” PO Joseph responds and says that the EMTs are just going to come up to her apartment and check on her. At 14:44, PO Henriquez walks into the kitchen and tells § 87(2)(b) that EMS has arrived. At 15:34, PO Joseph tells Sgt. Kistoo, who has just arrived, that § 87(2)(b) locked § 87(2)(b) out on the terrace and that § 87(2)(b) broke the window to get back in. PO Joseph also informs Sgt. Kistoo that § 87(2)(b) tried to grab § 87(2)(b) arm after breaking the window. Sgt. Kistoo asks, “He wasn’t trying to assault her, he was just trying to come in?” PO Joseph responds, “I think so.” At 20:20, § 87(2)(b) points out her in-home heart monitor to an EMT. At 21:30, § 87(2)(b) asks to explain to the EMTs all her medication and medical supplies. PO Joseph responds, “They’ll know.”

PO Herrera’s BWC at 03:00, shows PO Herrera and § 87(2)(b) speaking in the hallway **(01 Board Review)**. § 87(2)(b) explains that § 87(2)(b) locked him out on the terrace while he was cleaning it, that she threw his phone off the terrace, and that when he attempted to climb into the living room through the window, she shut the window on his arm. § 87(2)(b) thus broke the window on the terrace door, which scattered broken glass across the kitchen, and then gained entry into the apartment. At 06:00, Sgt. Herrera answers a phone call, stating, “Hey, Sarge,” and proceeds to state that they are dealing with a husband and wife at the apartment and, that the wife “is a little irate.” At 15:10, EMTs and about six additional officers, including Sgt. Kistoo, all arrive on scene and enter the apartment.

Sgt. Kistoo's BWC at 03:20 shows him and PO Cacavas entering the apartment after they arrive on scene (**07 Board Review**). PO Joseph approaches Sgt. Kistoo and tells Sgt. Kistoo that § 87(2)(b) locked § 87(2)(b) on the terrace of their apartment. Sgt. Kistoo approaches § 87(2)(b) who is in tears, speaking loudly, and breathing heavily. The terrace door is open three feet to § 87(2)(b) left. At 04:22, an EMT examines § 87(2)(b) arms as § 87(2)(b) speaks with Sgt. Kistoo. § 87(2)(b) tells Sgt. Kistoo that she "got ripped up with glass" and that § 87(2)(b) intentionally tried to hurt her. She then proceeds to tell Sgt. Kistoo that she has a pacemaker, was recently diagnosed with cancer, and that she has a heart monitor. The EMT offers to check § 87(2)(b) pulse, but she replies, "I am not leaving the apartment." Sgt. Kistoo asks § 87(2)(b) if she is refusing medical attention. § 87(2)(b) replies, "I am not leaving the apartment," and that she does not want to go to the hospital. (PO Henriquez's BWC at 08:00, shows an EMT using a sphygmomanometer and oximeter to take § 87(2)(b) blood pressure and oxygen levels (**04 Board Review**)) At 06:55, Sgt. Kistoo receives a call over the radio, and walks away from § 87(2)(b) just as she begins to tell him what had transpired between her and § 87(2)(b). He does not at any point return to interview her further. While in the living room, PO Herrera tells Sgt. Kistoo that § 87(2)(b) locked § 87(2)(b) on the terrace. Sgt. Kistoo turns to § 87(2)(b) standing in the building's hallway, and says, "She's been doing this for years, right?" § 87(2)(b) responds, "Oh yeah." Sgt. Kistoo then tells PO Herrera to "EDP" § 87(2)(b) and that she is going to the hospital. At 08:23, Sgt. Kistoo begins speaking with § 87(2)(b) telling him that § 87(2)(b) is going to the hospital and that the police are going to take a statement from him and § 87(2)(b) so the officers can prepare a domestic incident report for both parties. At 09:22, Sgt. Kistoo tells PO Milo "We're just gonna get § 87(2)(b) checked out because I don't want these two in the same apartment right now." At 10:59, Sgt. Kistoo tells the EMTs, "Let's get her evaluated. I need to separate both of these two and let her get treated for her injuries [...] Even if she's not going willfully, she needs her medication, she needs to get checked out [...] I know she has a pacemaker, I know she has cancer, but we gotta get her out of here, because it's just gonna escalate." At 11:13, an EMT asks Sgt. Kistoo if § 87(2)(b) is not taking her medication. Sgt. Kistoo and PO Joseph both state they do not know. At 12:55, Sgt. Kistoo approaches § 87(2)(b) again in the kitchen as she says, "I have a right to refuse treatment." Sgt. Kistoo says she does not and asks her to stand up twice. She refuses both times. PO Milo and Sgt. Kistoo grab and handcuff § 87(2)(b) hands, and together with some of the other officers, place her on the stretcher, and she is removed from the apartment.

Sgt. Kistoo's testimony was consistent with the BWC, but with the following exceptions. (**13 Board Review**). He said he spoke with § 87(2)(b) that § 87(2)(b) said he feared for his safety while he was on the terrace, and that § 87(2)(b) also expressed concern for § 87(2)(b) safety because she was not taking her medication and was "not right." § 87(2)(b) confirmed that she locked § 87(2)(b) on the terrace and said she did so because § 87(2)(b) was "acting like an animal," and had threatened to "take her away." § 87(2)(b) however, changed her account and said the terrace door closed by itself. She did not make any statements about § 87(2)(b) assaulting or physically abusing her. Sgt. Kistoo determined that § 87(2)(b) was the aggressor of the dispute given that she had locked § 87(2)(b) out in the terrace but elected not to make any arrests because he did not think there was any evidence of a crime. Sgt. Kistoo, however, elected to have § 87(2)(b) removed to the hospital because he believed she was "going to harm to herself or harm someone else." Sgt. Kistoo did not specify how he believed § 87(2)(b) was going to harm herself or others, but said § 87(2)(b) inconsistent account about the dispute, coupled with the fact that she was extremely emotional, irate, and that she suffered from chronic medical conditions such as having a pacemaker, experiencing shortness of breath, cancer, etc. and was not taking her medication, all lent credence to the fact that she was "not of a sound mind," and thus needed to be "checked out" for her own safety." Sgt. Kistoo acknowledged that he did not consult the EMTs before deciding to have § 87(2)(b) removed to the hospital and said removing § 87(2)(b) to

the hospital was a means of helping both § 87(2)(b) and § 87(2)(b) and that the removal was an avenue to separate both parties for a prolonged period of time.

NYPD Patrol Guide Procedure 221-13 states a person is emotionally disturbed if he/she meets two conditions: the person “appears to be mentally ill or temporarily deranged” and the person “is conducting himself [sic] in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others” (24 Board Review). It states EDPs “must be taken into protective custody.”

Sgt. Kistoo said he authorized § 87(2)(b) removal to the hospital because he was concerned about her safety due to the fact that she was not taking her medication, had complained about her blood pressure being high, and had informed the officers about her other chronic medical conditions. The investigation found that while it was reasonable for Sgt. Kistoo to express concern about § 87(2)(b) health, given that she had voluntarily informed the officers about her medical conditions, it was unreasonable for him to have ordered her removal to the hospital. The BWC establishes that § 87(2)(b) only informed the officers about her medical condition within the context of her dispute with § 87(2)(b) and that she did not at any point complain of being in medical distress, and repeatedly told the officers and EMTs that she was fine and did not need medical attention. The BWC again shows that EMTs, who were requested to the location primarily because of § 87(2)(b) complaint that her blood pressure was high, were examining § 87(2)(b) blood and oxygen levels at the time Sgt. Kistoo made the decision to remove § 87(2)(b) to the hospital, that Sgt. Kistoo contrary to his testimony, did not know whether § 87(2)(b) was taking her medication, and did not in any way consult or involve the EMTs prior to electing to have § 87(2)(b) removed to the hospital. § 87(2)(b) medical records also establish that § 87(2)(b) did not receive any new treatment or medications while at the hospital, and thus lend credence to the fact that Sgt. Kistoo rushed in his decision to remove § 87(2)(b) to the hospital and that had he allowed the EMTs to conclude their evaluation of § 87(2)(b) the EMTs would have been in a better position advise whether she had to be removed to the hospital for further evaluation.

Sgt. Kistoo also said that he ordered § 87(2)(b) removal to the hospital because he was concerned that she was going to “harm herself or someone,” but did not provide any details to as how why he believed that except that she had acknowledged locking § 87(2)(b) out on the terrace and was extremely emotional and irate during the entire incident. The BWC, however, establishes that although § 87(2)(b) was emotional, and somewhat irate, she did not in any way act violently or aggressively towards § 87(2)(b) and that even if one credits that her decision to lock § 87(2)(b) out on the terrace constituted aggressive behavior, such action cannot be deemed as a threat to harm self or others. Additionally, the BWC shows that § 87(2)(b) did not at any point express concern for his safety or that of § 87(2)(b) and that Sgt Kistoo main motivation for ordering § 87(2)(b) removal to the hospital was primarily to separate the two disputing couples for a prolonged period of time and was thus not borne out of any particularized or reasonable concern for safety.

§ 87(2)(g)

Allegation (B) Force: Police Officer Ulricka Joseph used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Dianna Milo used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Brendan Henriquez used physical force against § 87(2)(b)

Allegation (E) Force: Sergeant Mark Kistoo used physical force against § 87(2)(b)

Allegation (F) Force: Police Officer Jonathan Cacavas used physical force against § 87(2)(b)

§ 87(2)(b) stated that after she was handcuffed, Sgt. Kistoo, PO Joseph, PO Henriquez, PO Milo, PO Cacavas, all identified via investigation, dragged her by her arms and legs from her kitchen towards a stretcher near her front door, and ultimately placed her on the stretcher prior to her removal to the hospital (**11 Board Review**).

Sgt. Kistoo's BWC at 13:42 shows Sgt. Kistoo ordering PO Joseph and PO Milo to walk § 87(2)(b) out of the kitchen after § 87(2)(b) was handcuffed and standing (**07 Board Review**). Seconds later, § 87(2)(b) drops to the floor, and refuses to go to the hospital. At 14:20, Sgt. Kistoo orders PO Henriquez, PO Milo, PO Joseph, and PO Cacavas to carry § 87(2)(b) to the stretcher by her arms and legs. Sgt. Kistoo and the four officers then grab § 87(2)(b) arms and legs, lift her up from the floor, and carry her towards a stretcher, which is in the living room, and less than three feet from the kitchen. The officers briefly sit § 87(2)(b) on the living room floor, move the stretcher closer to § 87(2)(b) lift her by her arms and legs again, and place her on the stretcher. She is then secured in the stretcher and wheeled out of the apartment. At no point do any of the officers drag § 87(2)(b) toward the stretcher.

The BWC footage establishes that § 87(2)(b) refused to voluntarily walk to the stretcher, and deliberately sat on the kitchen floor when the officers attempted to escort her to the stretcher. The officers grabbed § 87(2)(b) arms and legs, lifted her up from the floor, and carried her to the stretcher, which was approximately three to four feet away from the kitchen. BWC thus contradicts her account that she was dragged towards the stretcher and establishes that the officers' actions were consistent with getting her to the stretcher. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**15 Board Review**).
- Sgt. Kistoo has been a member of service for 15 and has been a subject in nine CCRB complaints and 27 allegations, of which nine were substantiated.:
 - Case #200914325 involved substantiated allegations of a search a person, a stop, and a threat of arrest. The Board recommended charges and the NYPD imposed no disciplinary action.
 - Case #201008587 involved substantiated allegations of a search of a person against. The Board recommended command discipline and the NYPD imposed instructions.
 - Case #201804459 involved substantiated allegations of photography/videography, verbal sexual harassment, sexual/romantic proposition, and a discourteous word. The Board recommended charges and the imposed a discipline of a forfeiture of 15 vacation days.
- PO Joseph has been a member of service for one year and this is the first CCRB complaint to which she has been a subject.
- PO Henriquez has been a member of service for one year and this is the first CCRB complaint to which he has been a subject.
- PO Milo has been a member of service for one year and this is the first CCRB complaint to which she has been a subject.
- PO Cacavas has been a member of service for two years and has been a subject in one other CCRB complaint and three allegations, none of which were substantiated § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of August 17, 2022, the New York City Office of the Comptroller has no history of a Notice of Claim being filed in regard to this incident (**16 Board Review**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 1

Investigator:	<u>Coleson Smith</u>	<u>Inv. Coleson Smith</u>	<u>11/07/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Enoch Sowah</u>	<u></u>	<u>11/07/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date

CCRB Case # 202202775